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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

T.H. JACKSON,

Civ. No. 04-6176-TC

Plaintiff,

ORDER

v.

JOANNE B. BARNHART,  
Commissioner, Social Security  
Administration,

Defendant.

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AIKEN, Judge:

On November 30, 2005, Magistrate Judge Coffin filed his Findings and Recommendation, finding that the Commissioner's decision to deny a waiver for overpayment recovery was not

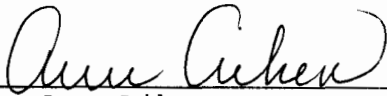
supported by substantial evidence in the record and recommending that the Commissioner's decision be reversed. The matter is now before me. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When either party objects to any portion of a magistrate judge's Findings and Recommendation, the district court must make a de novo determination of that portion of the magistrate judge's report. See 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). The Commissioner filed timely objections to the Findings and Recommendation. I have, therefore, given de novo review of Judge Coffin's well-reasoned opinion, and I find no error.

I agree that substantial evidence in the record does not support the ALJ's finding that plaintiff "was not without fault" in accepting overpayments of disability benefits. Notably, plaintiff was not notified until 1999 that his benefits had ceased effective May 1996. In the meantime, plaintiff provided the Social Security Administration (SSA) with complete information regarding his earnings, plaintiff contacted the SSA to inform them of his employment status, and plaintiff received a letter stating that the amount of benefits would be changed due to additional earnings and cost of living adjustments. Tr. 62, 103-04, 112-14, 117-119. Further, recovery under these circumstances would be contrary to equity and good conscience. Thus, I find that plaintiff is entitled to a waiver of overpayment recovery.

Accordingly, IT IS HEREBY ORDERED that Magistrate Judge Coffin's Findings and Recommendation (doc. 10) filed November 30, 2005, is ADOPTED, and the decision of the Commissioner is REVERSED. IT IS SO ORDERED.

Dated this 14 day of March, 2006.

  
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Ann Aiken  
United States District Judge